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18 and CHRIS SHAHEEN

19 UNITED STATES BANKRUPTCY COURT
20 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

21 In Re:
22 KINGSWAY CAPITAL PARTNERS, LLC

Chapter 11 Bankruptcy
Case No.: 14-31532 HLB

23 KINGSWAY CAPITAL PARTNERS, LLC,
24 Plaintiff,

25 vs.

26 SLAVIK S. LEYDIKER, JAIME ALVAREZ,
27 DAN BEATTY, STEVE CARMASSI,
28 CUSTARD INSURANCE ADJUSTERS, FIRST
MERCURY INSURANCE NAIC #10657, BRET
HUSTED, INTER WEST INSURANCE
SERVICES, JEFFREY JOHNSON, JENNIFER
LOSKAMP, MARIA SOSA'S INSURER, NEW
BUYER OF SUBJECT PROPERTY, ROOF
GUARD COMPANY, INC., CHRIS SHAHEEN,
MARIA SOSA, SOSA MARIA G. TRUST, AND
STATE COMPENSATION INSURANCE FUND
(CA) NAIC #35076

Defendants.

Adversary Proceeding No. 14-03149
HLB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS
COMPLAINT**

Date: January 22, 2015
Time: 2:00 p.m.
Dept: Courtroom 23
Judge: Hon. Hannah L. Blumenstiel

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Nathaniel Sobayo purportedly does business as Kingsway Capital Partners, LLC.
5 Kingsway filed for relief under Chapter 11. It then brought this adversary proceeding under the
6 Fair Debt Collection Practices Act. Kingsway's action arises out of a purported lease agreement
7 on a commercial building between Sobayo as tenant and the owner/landlord, Maria Sosa.

8 Moving defendants, Jennifer Loskamp and Chris Shaheen, are real estate agents. The
9 only allegations pertaining to them are contained in the listing of the "defendants." Loskamp
10 and Shaheen are alleged to be the real estate agent for the "purported new buyers" of the
11 property.

12 Plaintiff's complaint has nothing to do with the attempted sale of the property. It is based
13 on Sosa's (and various people associated with her) alleged misdeeds during Sobayo's tenancy.
14 Neither Jennifer Loskamp nor Chris Shaheen had anything to do with the landlord-tenant issues
15 that are involved in this case.

16 Sobayo has filed an action in the San Mateo County Superior Court. In that action,
17 Loskamp and Shaheen's demurrer was sustained with leave. It is unknown at this time whether
18 Sobayo will amend the complaint. (See Request for Judicial Notice.)

19
20 **II. PLAINTIFF'S ALLEGATIONS**

21 It is difficult to summarize plaintiff's allegations. In a nutshell, it appears that the basis
22 for plaintiff's claim is a purported lease agreement for commercial property on University
23 Avenue in East Palo Alto. Kingsway avers that Sobayo leases commercial space from Maria
24 Sosa; that the property suffered from various defects, including roof leaks; and that as a result,
25 plaintiff's personal property was severely damaged.

26 The only "allegations" against moving defendants are:

27 /////

1
2 "Jennifer Loskamp, evil-minded Realtor of Coldwell Banker, a franchise division; for
3 proposed and purported new buyer of Subject Property, yet to be identified; and a co-conspirator
4 with all other defendants named herein"; and

5 "Chris Shaheen evil-minded Commercial Associate of Coldwell Banker, a franchise
6 division; for proposed and purported new buyer of Subject Property, yet to be identified; and a
7 co-conspirator with all other defendants named herein." (See Complaint, p. 2, paragraphs 14-15;
8 p. 4, paragraphs 14-15).

9 Plaintiff's complaint does not set forth any acts alleged undertaken by either Loskamp or
10 Shaheen relating to Kingsway/Sobayo's tenancy.

11 **III. STANDARDS FOR A MOTION TO DISMISS**

12 Under Rule 7012(b) of the Federal Bankruptcy Rules, Rule 12(b)(6) of the F.R.C.P.
13 applies. F.R.C.P. 12(b)(6) provides that a motion to dismiss may be brought when a plaintiff
14 fails to state a claim upon which relief may be granted. The court may dismiss the complaint
15 either because the complaint lacks a cognizable legal theory or because a complaint lacks
16 sufficient allegations to support a cognizable legal theory. *Conservation Force v. Salazar VRW*,
17 646 F.3d 1240, 1242 (9th Cir. 2011). To defeat a motion to dismiss, plaintiff's complaint must
18 set forth sufficient facts to "state a facially plausible claim to relief." (*Id.*) Generally, the court
19 should "freely give leave [to amend] when justice so requires. [I]t is properly denied, however,
20 if amendment would be futile." *Carrico v City and County SF*, 656 F.3d 1002, 1008 (9th Cir.
21 2011)

22 **IV. STATEMENT OF CORE PROCEEDINGS**

23 This is a core proceeding.

24 **V. ARGUMENT**

25 Plaintiff's complaint does not set forth any charging allegations against moving
26 defendants.

27 /////

1 Plaintiff's complaint purports to state five counts. Counts I and II pertain to alleged
2 violations of 15 U.S.C. §§ 1692(i) and 1692(d). Count III appears to be for common law fraud
3 although it also makes reference to 15 U.S.C. §§ 1692(d) and 1692(f). Count IV is apparently a
4 request for injunctive relief for enforcing a debt. Count IV appears to be for common law fraud.

5
6 The complaint asserts various problems that Sobayo claims occurred as a result of his
7 tenancy at the subject property. There are no allegations that suggest that either Loskamp or
8 Shaheen had anything to do with the lease, the landlord (Sosa) or the tenancy. In fact, Loskamp
9 and Shaheen are specifically referred to as the real estate agents involved in a potential sale of
10 the property representing some unknown buyer. Plaintiff's action is not premised upon any acts
11 pertaining to the attempted sale.

12 Thus, the complaint fails to state any potential cause of action against any moving
13 defendants. Further, as Sobayo's problems stem from his tenancy, any attempt to amend as
14 against Loskamp and Shaheen would be futile. Accordingly, the Court should grant this motion
15 without leave to amend. (*Carrico v. City and County of SF*, (supra) 656 F.3d at 1008.) For the
16 foregoing reasons, this motion should be granted without leave to amend.

17 DATED: December 10, 2014

Respectfully submitted,

18 Gagen, McCoy, McMahon, Koss, Markowitz &
19 Raines
A Professional Corporation

20
21 By: Richard C. Raines
Attorneys for Defendants JENNIFER LOSKAMP
22 and CHRIS SHAHEEN